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January 29, 1992

Richard J. Kissel, Esq.
Gardner, Carton & Douglas
Suite 3400 - Quaker Tower
321 North Clark Street
Chicago, Illinois 60610

Re: **Waukegan Coke Plant Site ("Site");
License Agreement ("License")**

Dear Mr. Kissel:

The North Shore Gas Company ("North Shore") has reviewed your January 17, 1992 License Agreement and believes that Outboard Marine Corporation ("OMC") has introduced several counterproductive and/or impossible requirements into the License. While your partner, Mr. Watson, has characterized these unacceptable new provisions as "a couple of additions", Mr. Watson, unlike you, has not attended our joint negotiations. As you and Mr. Vitale are well aware, the January 17, 1992 License breaks both North Shore's basic premise of not paying for Site access and EPA's exclusive right to control Site work compelled under the Superfund law.

North Shore remains interested in continuing negotiations with OMC to obtain Site access. As we tentatively discussed today, we will meet again on Monday, February 3, 1992 at 9:00 a.m. at our offices on the 29th floor. As an aid to continuing productive negotiations, I highlight the following License paragraphs:

- ¶ 3(a) Pursuant to Administrative Order, North Shore is subject to EPA's direction to conduct RI/FS work. North Shore is unable to guarantee that Administrative Order work will not impact OMC's Consent Decree work. However, both North Shore and OMC share the same EPA site manager and EPA's legal counsel Mr. Mulroney has advised you that EPA will seek to coordinate adjacent work.
- ¶ 3(b) **Comment I** - North Shore provided Mr. Vitale with the Site work plan detailing the RI/FS. EPA has approved this Site work plan and the Administrative Order requires North Shore to implement the work. For this reason, North Shore has no power to grant OMC "a reasonable opportunity to comment on these [RI/FS] activities prior to commencing such activities at the Site." North Shore solicited OMC's participation, OMC refused and now OMC wishes to comment after EPA's approval of the RI/FS. Of course, OMC voluntarily passed on participating in RI/FS work when OMC refused to sign the Administrative Order

and in this way OMC knowingly failed to assume a role in developing the RI/FS. OMC is well aware that EPA's administrative procedures disallow such late participation.

Comment II - OMC reserves "sole and exclusive judgment" to determine that RI/FS implementation "interferes" with Consent Decree work and to stop Site work. Also, OMC purports to "grant" EPA power to "resolve the issues of interferences" if EPA agrees (i) that such interference constitutes "force majeure" and (ii) to OMC's demands for modification to the Consent Decree's Remedial Action Plan. Without commenting on the reasonableness of such requirements, North Shore notes that OMC has chosen the wrong forum to address its concerns on Consent Decree implementation. EPA is the sole party empowered to grant OMC's desired "force majeure" and modification demands under the Consent Decree. Of course, North Shore cannot solve these OMC's demands and OMC has thus posed an impossible requirement on North Shore as a condition of providing Site access.

¶ 5 North Shore will not be liable to OMC for EPA required activity under the Administrative Order which "directly or indirectly" delays Consent Decree work.

¶ 6 **Comment I** - North Shore's existing Site Safety and Health Plan addresses Site security and is EPA approved. While North Shore is willing to consider reasonable OMC requests for "additional security measures" North Shore must adhere to EPA's, not OMC's, requirements. However, North Shore would expect that OMC's legitimate concerns would be met through good faith discussions.

Comment II - As noted above, the Site Safety and Health Plan was approved by EPA and North Shore provided such to OMC. Under the Superfund law, EPA has sole jurisdiction over this matter. Accordingly, North Shore is puzzled by OMC's absolute Site access requirement that North Shore obtain approval of the Site Health and Safety Plan by the Occupational Safety and Health Administration ("OSHA"). To our knowledge OSHA is without sovereign power to arrogate EPA's powers and OSHA has no role in approving EPA decisions. Again, North Shore believes that OMC is in the wrong forum; this Site access agreement cannot enact Congressional legislation authorizing OSHA to approve/disapprove the Site Health and Safety Plan. North Shore has no power to compel OSHA to act and OMC's requirement here acts to prevent Site access for a reason wholly beyond North Shore's powers.

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- ¶ 10 Documents not subject to attorney-client privilege and/or Freedom of Information Act provisions will be shared by North Shore with OMC, provided that OMC makes this a mutual obligation for all Site-related information.

This letter summarizes many, but not all of North Shore's objections to the License. I note that ¶ 8, Insurance, remains to be discussed at our next negotiation session.

Sincerely,

A handwritten signature in black ink, appearing to read "Russell B. Selman", with a long horizontal flourish extending to the right.

Russell B. Selman

RBS:mp

cc: Peter Kauffman, Esq.
Sean Mulroney, Esq.